

# **SPECIAL ACT CHARTER DRAFTING COMMITTEE**

## **EXECUTIVE SUMMARY OF FINAL RECOMMENDATIONS**

The following is a summary of the recommended changes to the Northampton City Charter submitted by the Special Act Charter Drafting Committee on January 19, 2012. We have included the rationale behind these recommendations to better assist the City Council and the public in assessing the proposed changes.

The Committee's primary objective was to modernize our 129 year-old charter into a streamlined and flexible governing document comprehensible to the public. The current charter is filled with archaic language and patchwork amendments that make the overall document difficult to follow and often contradictory. The consultant advising the Committee, Stephen McGoldrick, deputy director of the Edward J. Collins, Jr. Center for Public Management at the University of Massachusetts Boston, provided us with a template of a modern Massachusetts charter that guided us in our task.

We are confident that if you compare the current charter

(<http://www.northamptonma.gov/charter/uploads/listWidget/8852/NorthamptonCodeCharterandRelatedActs.pdf>) with our proposal

(<http://www.northamptonma.gov/uploads/basicContentWidget/10812/SpecialActCharterDrafting.Final%20Recommend.01-19-12.pdf>), you will see that we have immeasurably improved the clarity of the document.

Other objectives were to improve the functioning of government, increase autonomy of the separate branches of government, and facilitate broader public participation in the process. To this end, we aspired to keep what works, fix what does not, and stay away from—and in some cases remove from the charter altogether—issues that do not belong in a municipal charter designed to last another 100 years.

Finally, the Committee made every practical effort to solicit public input during its tenure, holding nine public meetings, including two televised public forums and one roundtable discussion with former and current elected officials. We also reviewed dozens of pages of written submissions from the public. Our sense of what voters wanted to see in this document was part and parcel of our deliberations every step of the way; we recognize that at the end of this process, the voters will have the final say.

In the effort to strengthen our democratic institutions, we have proposed the following changes:

- Extend the term of Mayor to four years
- Shift chairmanship of City Council meetings from the Mayor to the City Council President
- Create a special election process to fill permanent mayoral vacancies

- Simplify School Committee elections so all terms run concurrently and last two years
- Improve transparency by requiring that Council-approved budgets break out the cost for both the compensation and benefits of elected officials
- Create a permanent advisory commission to make recommendations on appropriate levels of compensation and benefits for elected officials
- Provide the City Council discretion to exercise oversight over the setting of water and sewer fees by the Board of Public Works
- Increase the signature requirements to run for at-large City Council and School Committee positions from 50 to 100, and to run for Mayor from 50 to 150

In the spirit of keeping what works, we propose no change in the following areas where there has been notable debate:

- Maintain the Mayor as chair of the School Committee
- Maintain the City Clerk as an elected position
- Maintain the current provisions for Citizens Initiatives and Referendums
- Keep arbitrary term limits out of the charter for all positions, elected and appointed
- Retain current process for mayoral appointments, subject to approval by the Council

We also recommend the Council create a new commission to review our current electoral procedures and consider alternatives such as “instant runoff voting” or other substitutes for the current “preliminary election” system.

Further explanation about how we reached these conclusions follows. An attached appendix outlines in more detail the Committee’s deliberations and conclusions.

## THE OFFICE OF THE MAYOR

*The Committee recommends that the term of Mayor be extended from two years to four years.*

The Committee felt that a longer term would allow the Mayor to focus more on the long-term challenges of governing and avoid the distractions of perpetual campaigning and fundraising. A longer term would also provide the Mayor more time to implement changes and demonstrate results before the voters render judgment.

We also foresaw that a four-year term, by eliminating the need to perpetually campaign, might attract more candidates and encourage higher voter participation by increasing the stakes of each mayoral election.

Arguments against making this change included the concern that a longer term would decrease accountability to the voters. The Committee concluded that voters would retain the opportunity in biennial Council and School Committee elections to send a clear message to a Mayor by voting in or out Councilors or School Committee members that have supported or opposed the Mayor's initiatives.

*The Committee proposes establishing special election procedures for electing a Mayor when there is a permanent vacancy in the middle of a term.*

Currently, a permanent vacancy leads to an awkward situation in which the City Council President acts as Mayor but continues serving on the Council. This puts one person atop two branches of government at once, upsetting the separation of powers and raising questions -- unanswered by the current charter -- about proper compensation. Furthermore, the current charter does not provide for a special election in the event of a permanent mayoral vacancy.

The Committee recommendation would create a special election to be held 90 days after a permanent vacancy occurs, unless the vacancy occurs during the last eight months of the term. In which case the current City Council President would become Mayor until the end of the term, vacating his or her Council seat. If the City Council President refused the office, the Council would elect another member to serve out the mayoral term.

This change necessitates the need for a City Council Vice-President, discussed below.

## THE CITY COUNCIL

*The Committee proposes transferring the chairmanship of City Council meetings from the Mayor to the City Council President.*

The current charter stipulates that the Mayor chairs City Council meetings. The Committee concluded that city governance would benefit from a clearer separation of powers and a more autonomous City Council.

While Committee members generally agreed that it is healthier for the Council and the Mayor to have a collaborative relationship instead of an adversarial one, such a relationship can be fostered without the head of the city's executive branch directly managing the affairs of the legislative branch. Only a couple of cities in Massachusetts have the Mayor chairing council meetings, and the state does not suffer from widespread acrimony at the local level. Finally, given the proposal to extend the mayoral term to four years, the Committee felt it was imperative to increase the independence and autonomy of the Council.

Although the majority of the public comment received was in favor of this change—including from the current Mayor and the previous Mayor—notable arguments to maintain the current arrangement were raised and considered by the Committee.

One concern was that the Mayor, as the City's full-time administrative head, needed to place items on the Council agenda. However, since the proposed charter specifies that the Council agenda be set in consultation with the Mayor, we do not anticipate any barriers to the Mayor placing important city business on the agenda.

Others were concerned that removing the Mayor from Council meetings might diminish the flow of information from the Mayor to the Council and the public (watching on TV), that the dynamics of the Council might become strained as members competed for the more prominent position of Council President, and that the setting of the Council agenda would require more professional resources than are currently available to the City Council. The Committee was not persuaded that these reservations outweighed the benefits of a more autonomous Council. The Mayor does not need to run Council meetings, or even be present at all Council meetings, for the two branches to regularly communicate with each other and maintain a working relationship. The proposed Charter requires the Mayor to attend Council meetings and answer specific questions upon request, ensuring full communication in public when necessary.

#### ***The Committee proposes creation of a Vice-President of the City Council***

The proposed changes to the Council chairmanship and how a permanent mayoral vacancy is filled (see above) necessitate the creation of the position of Vice-President of the City Council. The Vice-President would handle the duties of the President in the case of temporary absences, and in the event the City Council President were to become Mayor and leave the Council, the Vice-President would be elevated to Council President.

#### ***The proposed charter allows for Council discretion in overseeing the setting of water and sewer fees by the Board of Public Works.***

The current charter grants the Board of Public Works full discretion in setting water and sewer fees. Two current City Council members advocated for Council oversight of these fees, arguing that the power to levy taxes should ultimately rest in the hands of an elected body accountable to the voters. Another Councilor raised a counter-argument, claiming that the setting of water and sewer fees was a complicated technical matter highly regulated by the state, and as such should to be handled by people with the proper professional expertise.

The Committee concluded that the authority to set water and sewer fees fell outside the scope of the charter, and that the Council, as an elected body, was better positioned to decide where this authority should reside. The proposed charter thus eliminates all reference to the setting of water and sewer fees.

## THE SCHOOL COMMITTEE

*The Committee recommends maintaining the Mayor as both the Chair and a voting member of the School Committee.*

The current structure, common in Massachusetts cities of comparable size, reflects the reality that the School budget currently comprises nearly half of the City's operating budget. There was a consensus on the Charter Drafting Committee that the Mayor, as the elected official with the strongest mandate from the public, should play a leading role in shaping the School budget. The Committee was not persuaded that greater independence of the School Committee was in the best interest of the City.

However, it should be noted that this recommendation does not reflect the position of the current Vice-Chair of the School Committee.

*The Committee recommends two-year terms for both Ward and At-Large School Committee members.*

Under the current charter, School Committee At-Large representatives serve for two years while Ward representatives serve for four years, with elections for Ward seats held on a staggered basis. The committee did not hear any strong defense of this practice and concluded that a simplified structure of uniform two-year terms was preferable.

## COMPENSATION OF ELECTED OFFICIALS

*The Committee proposes that the annual budgets submitted for approval by the City Council include a line-item separately identifying the compensation and benefits provided to all elected officials.*

The City Council has the authority under the current city charter to set the salaries of elected officials through ordinance, while the Mayor retains the legal discretion under state law to determine elected officials' eligibility for benefits, including participation in the City's group health and life insurance plans. Under the proposed charter, the City Council and Mayor will retain these powers.

The Committee recognizes, however, the inherent conflicts of interest in these processes. City Councilors set their own salaries. Mayors who determine eligibility for benefits create the possibility for patronage abuse. Since the potential for such conflicts cannot be completely negated, the Committee saw a need for greater transparency. With clear budget line items, the public would be better positioned to see how elected officials are being compensated, providing an additional check to possible impropriety.

*The Committee proposes creation of an advisory commission to recommend appropriate levels of compensation for elected officials.*

The Committee considered the option of raising the levels of compensation for elected officials but failed to agree on the principles to follow or whether the charter was the appropriate place to make such a change. Some members felt that serving on the City Council or School Committee is a public honor and should not be pursued

for financial reasons. Others felt that citizens of modest financial means cannot contemplate this type of public service unless the compensation is increased significantly. Concerns were also raised that with increased transparency comes increased political difficulty for Councilors to vote for pay increases, even if it is simply to keep up with the rate of inflation.

The committee ultimately decided that the question of what constitutes fair and reasonable compensation required more in-depth research and discussion than we had time to provide. To ensure that such dialogue take place on an ongoing basis, the Committee proposes the establishment of a permanent Compensation of Elected Officials Advisory Board comprised of citizens that would review compensation levels and make recommendations to the City Council.

## **THE CITY CLERK**

*The Committee recommends that the City Clerk remain an elected official and not become a position appointed by the Mayor or the City Council.*

The Committee considered arguments in favor of a change, including that the Clerk's responsibilities and duties are prescribed almost entirely by state statutes, which would suggest that the vetting of professional qualifications could be better handled by the City Council or Mayor than by voters.

Concerns were raised, however, that a political appointment could result in a loss of neutrality and impartiality, and that an appointed position would change hands more often with changes in successive administrations, potentially degrading institutional knowledge.

Furthermore, the Committee was cognizant that for any change to be approved by the voters, we might need to include a "grandfather" provision allowing the current elected City Clerk to remain in office for an indefinite period. This raised the concern that the current Clerk would be neither accountable to the voters nor subject to oversight by an appointing authority.

## **MUNICIPAL ELECTIONS**

*The Committee proposes increasing the signature requirements for at-large City Council and School Committee candidates from 50 to 100, and for mayoral candidates from 50 to 150.*

While the Committee wants to maintain an electoral system open to all participants, it felt that city-wide office seekers should have to demonstrate a higher threshold of support than Ward office seekers. The recommended thresholds, which are in line with other Massachusetts cities of comparable size, achieve that goal without unduly burdening potential candidates.

We also proposed removing the current charter's stipulation that the candidate's petition call on signatories to attest to the candidate's "good moral character" and qualifications to perform the duties of office. We agreed that this language was antiquated and sufficiently ignored as to be essentially meaningless.

***The Committee rejects the idea of including term limits in the charter***

Opinions at the public forums and within the Committee were strong on both sides of this issue. The Committee deliberated and ultimately decided that creating an arbitrary term limit might deprive the city of experienced and dedicated individuals, and that ultimately it was for the voters to decide whether an elected official has served long enough.

***The Committee recommends the creation of a special commission to review alternative elections procedures***

The Committee was concerned about the fairness and costs of current provisions in the charter requiring preliminary elections in certain circumstances. We sought out alternative voting methods that would allow all candidates for office to compete on an equal footing in the general election.

We reviewed three separate options: retaining preliminary elections, introducing runoff elections instead of preliminary elections, and introducing a relatively new voting method known as Instant Runoff Voting ("IRV"). The discussion produced the greatest range of disagreement among Committee members, regarding issues such as majority vs. plurality winners, turnout levels, unfair advantages for incumbents and well-financed candidates, ease of voting and potential logistical challenges associated with out-dated voting technology and anticipated changes in Massachusetts voting regulations.

Given the complexity of these issues, we urge the Council to create a separate advisory commission to thoroughly explore alternatives, both existing and emerging, to our current system.

## **CITIZEN ACCESS**

***The Committee recommends keeping in the charter current provisions for Citizen Initiatives and Referendums***

The Citizen Initiative provides a means for citizens to try to enact ordinances that the City Council or School Committee will not consider, while the Referendum provides redress for citizens who wish to repeal an ordinance the City Council has approved or a decision of the School Committee. Our proposals modernize and clarify these two procedures.

We recommend against the adoption of the so-called Free Petition provision as it carries the possibility of excessive disruption of normal city business. We recommend against the adoption of a Recall measure as it cannot provide sufficient standards for determining incompetence, can result in an endless cycle of elections and recalls, and can undermine citizens' confidence in the electoral process.

## MISCELLANEOUS RECOMMENDATIONS OF THE COMMITTEE

### *Confirming Mayoral Appointments*

Two City Councilors proposed changing the process for nominating mayoral appointments. Currently, the Mayor nominates, and the Council accepts or rejects. The proposed change would give Councilors, and other members of the public, the ability to submit competing nominations directly to the full Council.

The Committee concluded such a change was not necessary to give the Council influence in the nomination process, and could potentially undermine the ability of city government to recruit talented citizens to serve in volunteer positions.

The Council already has the ability to make suggestions and express concerns to the Mayor early in the nomination process, and reject nominees if suggestions are unheeded. Similarly, members of the public can petition the Mayor or the Council if they believe a certain person deserves consideration.

The Committee felt that complicating the process with competing, last-minute nominations after the Council has vetted mayoral nominees would unnecessarily draw out the process and make it harder for citizen panels to function. Furthermore, forcing volunteers to be subjected to potential public humiliation as Councilors openly debate qualifications of competing nominees would likely discourage strong candidates from accepting nominations.

### *Elevating Minority Opinions*

A citizen presented a proposal to the Committee requiring the City Council and its committees to publish “pro and con” arguments for all matters before Councilors cast votes to ensure dissenting opinions are fully aired and considered. After many oral and written submissions to the Committee, the citizen modified his original proposal and requested that we amend our proposed charter to require the City Council state reasons for its decisions in a manner similar to the requirement (in Section 3-6) requiring the Mayor to set forth reasons for his or her disapproval of a measure passed by the City Council.

The Committee decided this sort of procedural rule did not belong in the charter, but was worthy of consideration by the Council as a matter of ordinance and best practice.

### *Incorporating all Special Acts and Amendments in the New Charter*

It is the Committee’s understanding that the City Solicitor, the City Clerk, and the charter consultant shall review all Special Acts and other amendments to the current charter and include *word for word* those deemed to be applicable in the new charter. It is our strong belief that all applicable provisions be contained in one document.



# **APPENDIX**

## **POWERS OF THE EXECUTIVE BRANCH**

### **1. LENGTH OF TERMS OF THE MAYOR**

**The Proposed Provision. The mayor's term should be 4 years.**

Arguments in Favor of the Provision:

- A 4 year term creates more continuity in the executive branch
- It gives a mayor more time to implement the platform he/she ran on in the election
- It allows the mayor to concentrate on city business without having to focus on fund-raising and the campaign

Arguments Against the Provision:

- There could be possible burnout in the position
- There could be a possible decrease in candidates because of long commitment to serve
- There might be less accountability to voters

The committee recommends that the mayor be elected to a four year term. Its reasons are as follows:

The committee considered 2, 3 and 4 year terms for mayor. The 3 year term, while it seemed to garner considerable support among some committee members and some members of the public, was rejected because it would mean scheduling some city elections out of sync with state and federal elections and would require the city to hold mayoral elections in the spring in some years because state law prohibits municipal elections to be held at the same time as state and federal elections.

The committee was convinced that it would be helpful to the city to have more continuity in the executive branch and to allow the mayor more time to implement his or her platform. It did not consider burnout a serious likelihood. It believes that there would not be a decrease in accountability to voters since the mayor has to run for re-election in any event. Historically, most mayors have run for at least one additional two year term, so the committee was not convinced that there would be a decrease in available candidates. As to the accountability issue, the committee determined that any dissatisfaction with the mayor's performance could be at least partially corrected at the midterm city council election.

### **2. MAYORAL QUALIFICATIONS**

The committee considered the broad qualifications of the mayor

The Proposed Provision:

The mayor must devote full time to the office and shall not hold any other elective office. However, the mayor will not be explicitly barred from engaging in any other business, occupation or profession during the period of service as mayor.

Arguments in favor of Provision:

- The mandate that a mayor must devote full time to the office is sufficient to ensure that citizens receive a full-time mayor without divided loyalties
- Between voter oversight and conflict of interest rules, there are sufficient checks on a mayor's possible self-dealing
- A total prohibition on "engaging in any other business" is too broad and too vague and would prevent a mayor from maintaining any interest in a business that would not negatively affect the office, such as receiving royalties from a previously published book.

Arguments against Provision:

- Any chance that a mayor may actively engage in a business or a profession outside of his or her office is too detrimental to the city to avoid express prohibition.

**The Committee unanimously agreed to support this provision and was convinced by the arguments set forth above in favor.**

### **3. AUTHORITY TO MAKE APPOINTMENTS**

The committee considered the mayor's exclusive power to nominate citizens to city boards.

The Proposed Provision:

The mayor will continue to have exclusive power to nominate individuals to city boards and committees, each nomination subject to confirmation or rejection by the city council.

Arguments in favor of Provision:

- This structure still allows for city councilors to recommend the nomination of citizens with a letter of reference to the mayor
- The structure is efficient and avoids embarrassing competing nominees -- who, after all, are volunteers—in public city council meetings.

Arguments against Provision:

- This structure denies city councilors and citizens the power to nominate citizens to city boards
- The structure concentrates power in the mayor regarding appointment to city boards

**The Committee unanimously agreed to keep the status quo and was convinced by the arguments set forth above in favor.**

# **POWERS OF THE LEGISLATIVE BRANCH: THE CITY COUNCIL**

## **1. COMPOSITION OF THE CITY COUNCIL**

The Proposed Provision: The city council will continue to have 9 members – one councilor from each of the 7 wards and 2 at-large councilors.

Arguments in Favor of Provision:

- A larger city council might be able to conduct the work of the city more efficiently

Arguments against Provision:

- A larger council might actually be inefficient

The Committee decided against changing the number of city council members because no compelling reason for doing so was advanced in our discussions.

## **2. CHAIRING CITY COUNCIL MEETINGS**

The Proposed Provision: The City Council President will preside over City Council meetings.

Arguments in Favor of Provision:

- This structure of government will better reflect the federal model of a separation between executive and legislative power.
- This structure will reflect a model endorsed by the great majority of citizens, and past and current city officials who made comments to this Committee.
- This structure will better balance power where the mayor now has a four-year term.
- The structure will reflect the current practice of all Massachusetts municipal governments, but one.

Arguments Against Provision:

- This structure will be less streamlined and, thereby, less efficient.
- This structure may prevent the mayor from contributing to city council debate.
- This structure would prevent the mayor from controlling the city council agenda.
- This structure may substantially increase the workload of city council members.

The Committee decided that the city council president should chair the city council meetings primarily because that structure clarifies the division between the executive function of the mayor and the legislative function of the city council. In addition, the language of the proposed charter requires that the city council President consult with the mayor to create the city council agenda so that the mayor's concerns should be well-represented in the city council's deliberations. In addition, the provision provides that the council can require the mayor to be present at city council meetings to answer specific questions.

### **3. CREATION OF A VICE PRESIDENT OF CITY COUNCIL**

The Proposed Provision: Since the committee proposes changes to the procedure for filling a permanent mayoral vacancy, it was necessary also to propose the new position of Vice President of the City Council. In the new vacancy provisions, the President of the City Council can no longer be a member of the council once he or she becomes Acting Mayor.

#### **Arguments in Favor of Provision:**

- When the president of the city council has to step up to fill a vacancy in the mayoral position, there needs to be continuity of leadership in the city council.
- The vice president can also assume the duties of the president in the case of temporary absences of the president.

#### **Arguments Against the Provision:**

- Possible rifts among city council members seeking this new position.

The committee decided to include the new position of vice president in its recommendations. The reasons for the decision were as stated above in the arguments in favor of the position. The committee believes that, even if there is competition for the position, the city council members will get beyond their election and focus on the work the city needs them to accomplish. The committee believes that the long-term procedural efficiency of establishing the new position outweighs its possible short-term limitations.

### **4. CONFIRMING MAYORAL APPOINTMENTS**

Two members of the city council proposed changing the process for confirming mayoral appointments. Under the current procedure the Mayor nominates an individual to a board or other appointed position, and the city council accepts or rejects the mayor's nomination. The proposed change would give councilors and other members of the public the ability simultaneously to place competing names in nomination to be vetted by the full council.

#### **Arguments for the Change:**

- It would increase the power of the city council in the appointment process
- It would curtail the power of the mayor in the appointment process

#### **Arguments against the Change:**

- Volunteer nominees would be discussed at city council meetings in full public view
- It would create confusion in the nomination process

- The appointments are properly within the power of the mayor with confirmation/rejection within the power of the city council
- It would damage the city's ability to attract willing volunteers to sit on board and other public bodies

The Committee declined to accept this change for nominating volunteer appointees because it supports the concept that the process properly belongs with the mayor with confirmation power retained by the city council. In addition, the committee sought a provision that encouraged rather than discouraged volunteers from participating on city boards and committees.

## 5. LENGTH OF TERMS OF THE CITY COUNCIL

The Proposed Provision. That a two year term remains in place for all city councilors (ward representatives and at-large members).

### Arguments in Favor of the Provision:

- The high work load and the low compensation for any of these positions would probably result in very few candidates if the term were for 4 years
- Holding elections every 2 years keeps the councilors closer and more in touch with the ideas and the needs of their constituents
- There might be a negative atmosphere established in the city council if at large members had longer terms than ward representatives.
- No citizen spoke against the proposal
- The simplicity of the provision would eliminate any confusion among voters as to the terms of their representatives

### Arguments Against the Provision:

- At large members have a large constituency to keep in touch with. It is a burden to run every two years.
- The possible negative atmosphere described above

The committee recommends that the new charter retain the two year term of all city council members for the following reasons. It wanted to encourage the greatest number of available candidates to run for these positions. It supports the notion that two year terms keep the councilors in better touch

with their constituents. Although it considered a longer term for at-large councilors (since they have to campaign to the larger constituency), the committee determined that it was more important to maintain the equality of status among city councilors that would remain if their terms were the same. In addition, the committee believes that inconsistent term limits among members could result in voter confusion.

## **6. SETTING WATER AND SEWER FEES**

Setting of Fees. Two members of the current city council raised a concern that it was inappropriate for the Board of Public Works to have the sole power to set water and sewer rates, as the current charter dictates. The request was based upon an argument that the power to tax the citizens should rest in the hands of an elected body. Another councilor disagreed, stating that the setting of water and sewer rates is a complicated and technical matter to be handled by people with professional expertise.

The committee unanimously agreed to take out the language in the current charter that mandates that the BPW has the sole power to set the fees. But we decided that the charter should not dictate where the ultimate power to set fees should lie. Our decision to remove the issue from the charter means that the city council will need to address it by ordinance. The city council members should be aware that by approving our recommended language, they assume the responsibility to determine fee-setting power by ordinance.

# **THE SCHOOL COMMITTEE**

## **1. CHAIRING SCHOOL COMMITTEE MEETINGS**

The Proposed Provision: The mayor will continue to preside over and vote in school committee meetings.

Arguments in Favor of the Provision:

- Since the Educational Reform Act of 1993, school committees have had their power as separate legislative bodies significantly diminished statewide. Thus, allowing the executive branch of Northampton's government to preside over and vote in the school committee does not pose an acute threat to the separation of powers.
- This structure reflects the significance of the school committee budget to the city.
- This structure reflects a model endorsed by a majority of citizens, and past and current city officials who made comments to the Committee.
- This structure is common in comparable Massachusetts municipalities.

Arguments Against the Provision:

- This structure is in contravention of a strict division between the executive and legislative branches of government.
- This structure was not endorsed by the vice-chair of the school committee who pointed out that the city's interests and the school committee's interests are not always aligned.
- This structure has been facilitated by the election of education-minded mayors, a variable that cannot always be depended on.

The committee decided in favor of the provision for the following reasons. The school committee's budget is so large an element of the city's full budget that the mayor's oversight of the school committee is of extreme importance to the city. Because of the school committee's central position in the affairs of the city, even a mayor who is elected without extensive knowledge of education would have to educate himself or herself sufficiently on these issues to administer the city effectively. A mayor who failed to do so would probably not be re-elected. While the school committee does select the superintendent and vote on school policies, it is not strictly a legislative body. It is an arm of the executive branch. Therefore, the committee's endorsement of this provision does not violate the separation of powers.

## **2. LENGTH OF TERMS OF THE SCHOOL COMMITTEE**

The Proposed Provision: That a two year term remain in place for all school committee members.

The committee recommends that the term of office for a School Committee member remain 2 years for ward and at-large members. The deliberations raised the same issues as described above for the city council. The reasons for the committee's recommendation are the same as the reasons for its decisions with regard to the city council.

## **COMPENSATION OF ELECTED OFFICIALS**

### **HOW SHOULD THE COMPENSATION OF ELECTED OFFICIALS BE DECIDED?**

Current Situation. The city council has the authority under the current city charter to set the salaries of elected officials through ordinance (legislation). The mayor retains the legal discretion under state law to determine elected officials' eligibility for benefits, including participation in the city's group health and life insurance plans.

Proposed Charter. The committee recommends that the city council and mayor will retain their powers as set forth above.

Inherent Conflicts of Interest. The committee recognized that the compensation (defined as salaries plus benefits) of elected officials is a politically charged issue. The committee also recognized that current compensation procedures entail inherent conflicts of interest (with city councilors establishing their own salaries) and the potential for patronage abuse (with the mayor determining benefits). The committee decided that it is vital to ensure the utmost transparency around compensation practices without unduly restricting the powers of the city council and the mayor to set compensation.

Competing Visions of Public Service. There was a range of understanding among committee members as to the purpose of compensating elected officials. Some members felt that public service is a public honor and should be perceived as largely a voluntary service with minimal financial compensation. Others felt that citizens of modest financial means cannot contemplate public service unless the compensation is sufficient to cover such costs as transportation, child care, etc. The committee has taken no position on these competing approaches to public service except to agree that compensation should be equitable among like officials (taking into consideration such variables as the time required in the position) and that there should be methods to account fairly for differences in the elected officials' individual receipt of benefits.

Further Recommendation. The committee decided that the question of appropriate compensation required more in-depth research and discussion than we had time to provide. Such research and discussion should take place on an ongoing basis to ensure that compensation practices are fair and reasonable. Therefore, the committee proposal the following:

- (1) The establishment of a permanent Compensation of Elected Officials Advisory Board. The board will be comprised of citizens who would periodically meet to review the compensation of elected officials and make recommendations to the city council; and
- (2) That the mayor be required to submit a separate budgetary line item request to the city council for all non-salary compensation for elected officials, including benefits such as participation in health and life insurance plans.



# THE CITY CLERK

## APPOINTMENT OR ELECTION OF CITY CLERK

The Proposed Provision. That the city clerk remains an elected position.

### Arguments for Appointment.

- The city clerk's responsibilities are guided primarily by detailed state statutes. Finding a person with the skills to follow these laws is more likely to be achieved by the appointment process than by the election process.
- The city clerk should be free from political influence.

### Arguments for Election.

- The city clerk should not be " beholden " to the mayor (who would appoint the city clerk). The city clerk should be independent and answerable to the voters.
- Northampton has a long history of electing its city clerk, and there has been no problem with the system.
- There is a chance that the broad charter reform recommended by the committee would be rejected on the basis of a change in this issue alone.

### Arguments for Retaining Current Clerk and Converting the Position to an Appointed Position at the Conclusion of her Service

- The City Clerk is a popular and highly effective elected official
- She herself argued strenuously in favor of retaining the position as an elected position
- She argued strenuously in favor of keeping the position independent from the oversight and authority of the mayor

The committee, after much discussion, decided to recommend that the city clerk remain an elected official. Many members of the committee believe that the most productive approach in modern times, when a city clerk has to have certain skills, would be for the city clerk to be appointed. Nevertheless, the entire committee felt very strongly that the current city clerk should be able to serve for as long as she wants to (assuming that she remains as effective as she currently is in the position). Hoping to balance those two strong points of view, the committee explored various ideas for retaining the current city clerk and later converting the position to an appointed position. For example, the committee explored allowing Ms. Mazza to remain in the position of city clerk as long as she desires, before an appointed clerk takes office. But that approach would mean no further elections until Ms. Mazza steps down, and that would leave the voters without any voice in the matter and the city without any oversight of the clerk's work for a period of time that could be extensive. Similarly, the committee considered a lengthy limit to Ms. Mazza's term in office. But, as the committee was opposed to term limits in general, it was unwilling to recommend a limit for this particular position. Finally, leaving the issue to a special act charter change in the future would not eliminate these interim problems because when Ms. Mazza leaves office, a new elected official would be in before such a charter change could be achieved – starting the cycle all over again. All the interim ideas seemed untenable to the Committee. On balance, then, the committee concluded that it was reasonable to retain the city clerk as an elected position.

# MUNICIPAL ELECTIONS

## 1. TERM LIMITS

Proposed Provision: That there be no term limits for any elected official.

Arguments in favor of term limits:

- They may encourage new candidates to run
- They provide a way to end the service of an unsatisfactory elected official

Arguments against term limits:

- They may end too soon the work of an experienced and dedicated elected official
- Historically in Northampton no mayor has served for more than 12 years, so there may be no need for term limits
- They decrease the power of the voters
- During the last years or months of a final term, the official is a “lame duck” facing difficulty in making progress

The committee recommends that there be no term limits for any elected position. The committee considered term limits for all elected positions. There were strong opinions expressed at the public forums and within the committee on both sides of this issue. The committee’s decision was based on its conclusion that the trust should be in the voters to make needed change in elected officials’ status, rather than in an artificially-mandated requirement. It believes that a system using no term limits provides the flexibility voters need to retain those officials who remain effective and to vote someone out of office when they believe that person is no longer effective.

## 2. SIGNATURES ON CANDIDATES’ PETITIONS

Current Provisions. To appear on the ballot for an elected position in Northampton, an individual must now collect 50 signatures from registered local voters. In addition, the current charter requires that the top of the candidate’s signature page carry the words: “We further state that we believe him to be of good moral character and qualified to perform the duties of the office.”

Proposed Provision.

1. Raise the number of signatures required for at large positions (city council and school committee) to 100.
2. Raise the number of signature required for mayor to 150.
3. Remove the language from the charter requiring the quoted endorsement above.

Arguments in Favor of the Provisions:

- The current number of signatures is very low, and a higher number would discourage frivolous candidates while not being too onerous for serious candidates
- The higher number is in line with the requirements of other charters in the state
- The quoted language is antiquated. Many people signing the petition may not know the candidate well enough to attest to his or her character, and in any event, it should be the election that allows voters to judge that issue – not the threshold questions of whether or not the person should be able to run for office

#### Arguments Against the Provisions:

- There is no need to increase the barrier to an individual's wish to be a candidate for any elected position

The committee supports the proposals. Its members agreed that the increase in the number of signatures may accomplish the goals set out above (in the arguments in favor of the provisions) without unduly discouraging serious candidates from running. It agreed that the quoted language is not necessary or appropriate for a petition.

### 3. CITY ELECTIONS

**The Committee's Proposal:** To retain the city's current election procedures at this time but require that the City Council appoint a commission to study the several emerging modern election options and report to the city after all the options are fully vetted.

**Reasons for the Proposal:** This Charter topic resulted in the greatest range of disagreements among Committee members. We all agree it is in the best interest of Northampton to have an election system that encourages a broad range of candidates to run for public office and encourages a large number of citizens to vote. Some members feel strongly that a well-constructed election process must result in a candidate's winning an election by a majority and not by a plurality. In discussing these goals, we analyzed 3 separate options: retaining preliminary elections, introducing run off elections instead of preliminary elections, and introducing a relatively new voting method known as Instant Run-Off Voting ("IRV") (described below).

To complicate our discussions, Massachusetts is in the process of promulgating new statutes and/or regulations regarding elections. There is no clear time-table for these expected changes, and any change we make in the city's election procedures may not comply with the new requirements. In addition, our voting machines are out of date and will have to be replaced soon at high cost. We do not know the technological capacity of any new machines we might purchase.

Given these realities and the very constricted timeframe in which the committee was required to complete its work, the wisest course seemed to require that a commission thoroughly explore the options and recommend the ways in which the city can adopt a more modern municipal election system. The specific concerns the committee discussed in arriving at its analysis of the three major issues are reviewed below. The Committee encourages any Election Commission established by the City Council to address the listed arguments.

**OPTION I: RETAINING PRELIMINARY ELECTIONS** (currently required whenever the number of candidates for a position is more than double the number of available seats for that position)

Arguments in Favor of Retaining Preliminary Elections:

- They usually result in a small enough field of candidates that the vote usually results in a majority for the winner
- Many people feel that a candidate should win by a majority and not a plurality in order to be able to take strong stands while in office
- Without a preliminary, there is a possibility that multiple candidates from a similar viewpoint will split the vote and the candidate with the highest number of votes will win but will not represent the viewpoint of the majority of voters

Arguments against Retaining Preliminary Elections:

- Preliminary elections favor incumbents
- Preliminary elections favor the wealthy
- Preliminary elections favor well-known candidates
- Preliminary elections discourage little known and minority candidates from running
- Preliminary elections reduce the field of candidates before voters have a good opportunity to learn about the candidates' platforms
- There is low voter turnout at Preliminary elections
- Every extra election is expensive for the taxpayers (about \$15,000 - \$20,000 depending on whether city-side or ward-based)

**OPTION II: INTRODUCING RUN-OFF ELECTIONS INSTEAD OF PRELIMINARY ELECTIONS**

Arguments in Favor of Run-Off Elections:

- Run-off elections would solve the problems of the preliminary elections described above
- No candidate is eliminated early, and a diversity of candidates is preserved for the general election

Arguments against Run-Off Elections:

- No city or town in Massachusetts uses run-off elections. Considerable work would have to be done to determine whether or not we would be able to adopt this approach under Massachusetts election laws
- They would have to take place in mid-December and would probably result in a very low voter turnout. (Preliminary elections, however, also produce a low voter turnout)
- They are still "extra" elections and therefore expensive to taxpayers
- The best opportunity to learn the will of the voters is the general election

**OPTION III: ALLOW ONLY A GENERAL ELECTION (NO PRELIMINARY, NO RUN-OFF, NO IRV).** (This option would result in the highest vote-getter winning the election)

Arguments in Favor of the General Election Only:

- There is only one election to pay for
- It is a simple process
- It encourages a diverse field of candidates

Arguments Against the General Election Only:

- A winner could receive a plurality but not a majority
- Multiple candidates with similar views may split the vote, and a candidate with the highest number of votes may not then represent the views of the majority of voters

**OPTION IV. ADOPTING INSTANT RUN-OFF VOTING (“IRV”)**

IRV, also known as “Ranked Choice Voting,” enables a voter to vote for his or her first choice while ranking all candidates in order. If no candidate receives over 50% of the vote, the candidate with the least number of votes is eliminated, and the voters who ranked that candidate first have their votes recast to their second choice candidate. This process is repeated until one candidate obtains over 50% of the vote. This method has been used in some US cities (Cambridge, MA, San Francisco, CA and Portland, ME) and in some foreign countries. The system eliminates the need for preliminary elections and run-off elections. There are strong advocates of this system but also strong detractors.

Arguments in Favor of IRV:

- One election eliminates the need for preliminary and run-off elections
- It allows voters to express their first choice without “throwing away” their vote
- It ensures a winner who obtains a majority
- It enhances the possibility of a diverse field of candidates

Arguments Against IRV:

- It can be confusing for voters and requires voter education
- It is new and has not been widely tested
- It is uncertain whether or not our technology will be adaptable to this system
- We don’t know whether or not the expected changes in the MA law will allow this system

## CITIZEN ACCESS

The Committee considered four processes by which citizens can initiate direct access to city government: The Free Petition, the Initiative Petition, the Referendum and Recall. Of these, the current charter provides for the Initiative Petition and the Referendum. The other two processes would be additions to the new charter.

### The Proposed Provisions.

1. The committee unanimously agreed to maintain the Initiative Petition and the Referendum, and the procedure for each of these has been modernized in the draft charter.
2. The Committee declined to adopt the two additional provisions.

All four processes are described below.

### **1. THE INITIATIVE PETITION.**

#### Characteristics:

- A resident of the city can put a proposed measure before the city council or school committee by obtaining the signatures of 15% of the registered voters as of the last municipal election.
- The city council or school committee may adopt the measure, pass a measure in lieu of the proposal or reject the measure.
- If the measure is rejected, the petitioners may obtain signatures in the number of an additional 5% of registered voters as of the last municipal election. If the measure is again rejected, the city council is required to put the issue to a city election. The measure will pass if (a) 20% of the voters as of the most recent city election vote on this issue; and (b) the measure passes by a majority of persons voting.

#### Arguments in Favor of the Initiative Petition:

- The citizens have access to the city council or school committee if either body has failed or refused to raise an issue of importance to citizens in the normal course of its business
- The percentage of petitioners needed strikes a balance between (a) creating such easy accessibility that the smooth functioning of government might be disrupted; and (b) erecting unreasonable barriers to citizen action

#### Arguments Against the Initiative Petition:

- The will of the majority can overrule the rights of a minority
- A useful practice or policy can be voted down
- A heavily funded special interest group can overcome the majority view
- The procedure can short-circuit normal government processes

## **2. REFERENDUM**

### **Characteristics:**

- Repeal of an existing measure of the city council or school committee
- Petition requires 12% of registered voters as of the last municipal election
- Upon receiving the petition, the city council or school committee must immediately reconsider the protested measure
- If it is not rescinded, the city council must schedule an election

### **Arguments in Favor of Referendum:**

- Referendum is a common provision in city charters
- It provides a method for repeal of an offending measure

### **Arguments Against Referendum:**

- The will of the majority can overrule the rights of a minority
- A useful practice or policy can be overturned
- A heavily funded special interest group can overcome the majority view
- The procedure can interfere with normal government processes

## **3. THE FREE PETITION**

### **Characteristics:**

- One hundred citizens can request action by the city council or school committee on any issue
- The city council or school committee must hold a public hearing and take action on the petition (adopt it, reject it, table it or refer it to committee) no later than 6 weeks after filing

### **Arguments in Favor of Free Petition**

- Extremely easy access to elected officials
- A simple procedure for resolution of the issue

### **Arguments Against Free Petition**

- It is such an easy procedure that it can seriously disrupt the normal flow of city business if one or more citizens decide to file frequent free petitions
- The initiative petition provides citizen access without the potential dangers of the free petition

## 4. RECALL

### Characteristics:

- Procedure to remove an elected official before the end of the term
- Not often used in cities (only 8 Massachusetts cities have a recall provision in their charters)

### Arguments in Favor of Recall:

- It is a method for removing an incompetent elected official from office

### Arguments against Recall:

- There are no standards for determining incompetence. The subjective nature of the procedure means it can be misused by any group of citizens
- The recalled official was elected by the people to begin with
- There are other provisions in the charter for filling a vacancy if the official is unable to serve
- The recalled official can run again at the next election, triggering a possible repetition of the recall/re-election process. This has occurred in other states
- The procedure can cause a high degree of civic unrest

Discussion. There was some public sentiment in favor of these two provisions and some initial support within the committee. But the committee agreed that the potential disruption in city government that could be caused by the Free Petition and the Recall outweigh any positive value that might occur in adopting these two processes. In both cases, there are other less potentially disruptive procedures to cure any problem that a citizen might want to raise. The city has long functioned without these two provisions in any case. While there was some public sentiment indicating that people with unpopular views are afraid to voice their opinions because of the atmosphere of our public bodies, nevertheless, the cure for that serious concern is to alter the atmosphere rather than adopt charter processes that could cripple the daily processes of city government.



## **MISCELLANEOUS RECOMMENDATIONS OF THE COMMITTEE**

### **A CITIZEN'S REQUEST THAT THE CITY COUNCIL ISSUE RATIONALES FOR ITS DECISIONS.**

A citizen requested a provision in the charter that the city council be required (and require its committees) to issue reasons for all contested decisions, including a review of the "pros and cons" of each proposal it acts on. After many oral and written submissions to the committee, the citizen reframed his position to request that we amend section 2-6 of the proposed charter to require the city council to state reasons for its decisions in a structure parallel to the requirement in section 3-6 requiring the mayor to set forth reasons for his or her disapproval of a measure passed by the city council.

The committee unanimously agreed that this was not a subject for charter change but rather a subject for the city council's own rules. There was consensus that the request may well be looked upon favorably by the Best Practices Committee. The city council should note that the only requirements for city council procedures set forth in section 2-6 are of the most general kind and do not and should not include the kind of detail contained in the proposal.

### **PROPOSAL REGARDING CERTAIN INCLUSION OF LAWS IN THE NEW CHARTER.**

The Committee unanimously submits the following final recommendation. We anticipate that, after the review by the city council (in coordination with the City Clerk, the City Solicitor and the charter consultant) of all the special acts, ordinances and other amendments which have been made over the years to the existing charter, there will be many that will be found to be no longer applicable at all, and many which may remain applicable but should be separated from the charter and stand alone as ordinances or other laws or rules. There may be some which will be found to remain applicable to and should remain part of the new charter itself. As to that final category, we strongly recommend that those laws, ordinances, etc. should be included within the new charter word for word, and not just included by reference. We anticipate that this full inclusion, despite lengthening the charter, will make it easier to use, clearer and more accessible to government officials and citizens alike.

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**Final Editor's Note:** During our process of reviewing Northampton's City Charter, each Committee Member took the lead in a specific area listed above, by facilitating the discussion during our open Public Forums. Each Member was then tasked with summarizing the feedback received, to help develop our final recommendations. Those recommendations led to a new proposed Charter and an Executive Summary. During our final meeting, Committee Members felt that these individual summaries also provided valuable information that could help shed light on our thought process and they should be included as an Appendix. For the sake of clarity I did 'lightly' reformat their original submissions to create a similar look but did so without changing the content. -David P. Stevens